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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Lund et al
Serial No. : 09/982,616 Examiner : Belyavskyi, Michail A.
Filed : October 17, 2001 Group Art Unit: 1644
For : CD38 MODULATED CHEMOTAXIS

RESPONSE TO RESTRICTION REQUIREMENT

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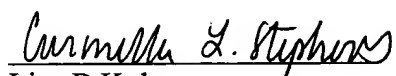
In response to the Restriction Requirement dated September 10, 2003, please consider the following remarks. The Examiner has stated that the claims of the present application encompass twenty-five different inventions.

In particular, the Examiner has indicated that the claims of group VIII which are drawn to a method for identifying a compound that activates CD38 enzyme activity, wherein CD38 mediated cell migration is measured, and the claims of group XIII which are drawn to a method for identifying a compound that inhibits CD38 enzyme activity, wherein CD38 mediated cell migration is measured, are different methods. Specifically, the Examiner alleges that "these invention differ with respect to ingredients, method steps and endpoints; therefore, each method is patently distinct. "

Applicants traverse this restriction requirement on the grounds that the claimed methods of group VIII and XIII of identifying modulators of CD38 activity through measuring of cell migration, are conceptually linked, and would not require separate searches. Further, the method claims of group VIII and XIII simply do not differ with respect to ingredients or method steps. In fact the claims are exactly identical with respect to ingredients and method steps (see claims 17, 18 and 19). The only difference between the claims of group VIII and XIII is that one can deduce whether an inhibitor or activator of CD38 has been identified based on whether cell migration is inhibited or activated. This last step of the method relies on the same physical activity, *i.e.*, measuring cell migration. Accordingly, Applicants request that the restriction requirement be reconsidered.

However, to be fully responsive to the instant restriction requirement, Applicants elect to pursue the claims of Group XIII (claims 18, 19 and 24) in this application without

prejudice to the prosecution of the subject matter of non-elected claims in other patent applications.



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